



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 15-04447
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations), Guideline K (Handling Protected Information), and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 23, 2013. On March 28, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, K, and E.¹

Applicant responded to the SOR on May 3 and May 27, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals

¹ The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

issued a notice of hearing on June 20, 2017, and the hearing was convened on July 12, 2017. Government Exhibits (GE) 1 through 7 were admitted in evidence. Applicant and three witnesses testified. Applicant submitted Applicant's Exhibits (AE) A and B. The record was held open so that Applicant could submit additional documentary evidence. He submitted additional documents marked together as AE C, and they were admitted without objection, except that Department Counsel noted Applicant's cover letter constituted additional argument. DOHA received the hearing transcript (Tr.) on July 20, 2017.

Findings of Fact

Applicant is a 41-year-old internet technology (IT) consultant for a defense contractor since 2012, where he worked part time until 2015, then began full-time employment in 2015. He previously worked as an IT director for another company from April 2012 to December 2013, until he was terminated for work accuracy, tardiness, not attending meetings, and discussing company business in violation of company policy. He also worked as a full-time consultant for other organizations from June 2014 to June 2015. Applicant graduated with a GED degree in 1994, and has various IT certificates. He was married in 1995 and has three children. He previously held a security clearance, but he noted that it was revoked.

The SOR² alleges Applicant is delinquent on approximately \$65,000 in debts, two state tax liens, a \$10,000 state debt for unpaid self-employment gross receipts tax, and a Chapter 7 bankruptcy in 2000. Additionally, the SOR alleges under Guidelines F, K, and E, that Applicant was accused of security violations and embezzlement by a former employer in 2014. Applicant denied the SOR allegations, except he admitted that he filed Chapter 7 bankruptcy.

Applicant owned a business, but failed to file state gross receipt taxes for 2008 to 2012, resulting in liens filed against him. (SOR ¶¶ 1.b and 1.q) After issuance of the SOR, Applicant contacted the state tax authorities and made arrangements to pay the delinquent taxes on an installment plan. The plan to pay \$20,708 in tax liability required Applicant to begin paying \$345.61 per month in May 2016, with the final payment due in April 2021. At the hearing, Applicant took responsibility for not paying his taxes when owed, but he was inconsistent as to how much was owed, the number of years he did not pay, and when installment payments were to begin. After the hearing, Applicant provided a 2016-2017 summary of payments by credit card, e-check, or other methods showing irregular amounts and inconsistent payments from August 2016 to August 2017. The document did not clearly describe to whom payments were made and, for several months, how much was paid.

² The SOR was amended at the hearing, without objection, to re-letter the last two allegations under SOR ¶ 1 as 1.y and 1.z, respectively, and to re-letter the text in SOR ¶ 2 and ¶ 3, to cross allege subparagraph 1.z. Pen and ink changes were made to the SOR copy in the orange AJ file.

At the hearing, Applicant acknowledged his debts, but generally denied their status on his credit report. He claimed that a judgment creditor could not verify the debt alleged in SOR ¶ 1.a, but said his records may have been destroyed in a flood in his home. He acknowledged a \$14,000 debt on a credit card alleged in SOR ¶ 1.c, but was unsure what he did to address the debt. He also acknowledged the remaining SOR debts, and requested additional time to submit documentary evidence showing their resolution. He provided a letter dated July 7, 2017, from a credit-repair firm stating that they were hired to update inaccurate and erroneous information on Applicant's credit report and to restore his credit within a designated timeline, however no evidence was submitted showing resolved debts or disputed credit report entries.

Applicant noted that he was married when he was 19 years old and quickly had two children. He was laid off from a stable job he held from 1998 to 2000, and attended school while managing his family's expenses on unemployment insurance. He struggled financially beginning in 1999, and did not earn enough to cover debts and expenses. He found new employment in 2000, and sought financial assistance from a debt consolidation company. They recommended he file Chapter 7 bankruptcy. After discharge of the bankruptcy in 2000, Applicant believed he was financially stable until he was again laid-off in 2008. He then purchased the business, but experienced the national recession in 2009. He believes his current financial status is good, and his spouse is employed as a nurse.

Applicant's current credit report shows significant current consumer debt, with ten revolving accounts totaling approximately \$6,500, and five installment accounts such as student loans and vehicle debts of approximately \$71,000. He owns a home worth approximately \$220,000 with \$15,000 in equity, and has about \$700 in savings and \$14,000 in a 401k retirement account.

Insufficient evidence was submitted to show Applicant had a history of security violations, breaches, or embezzlement. Allegations of tardiness, missed meetings, poor performance of tasks, or sending e-mails to former employees raise issues that may have served as the basis of the termination, but Applicant disputed these allegations and believed the company terminated him because he raised security issues that were not well received by management. There was evidence provided to show that Applicant transferred a particular file to a personal account, which he believed he was permitted to do, but the company claimed was a violation of company policy. Applicant's co-worker, who was the former facility security officer and was fired for the same reasons as Applicant, supported Applicant's work performance and Applicant's view that the employer made allegations against him in retaliation for complaints that he and the witness made about the company's security integrity. The witnesses and persons who provided letters of recommendation fully support Applicant's personal integrity, work performance, high moral character, and reliability. I conclude the Government failed to establish by substantial evidence, the allegations listed under SOR ¶¶ 1.z, 2.a, and 3.a.

Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 1(d).

Analysis

Guideline F: Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn,

unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's delinquent debts are recent and numerous, however, there is insufficient evidence to determine that they were incurred under circumstances making them unlikely to recur. Applicant has a history of job losses and a business downturn that likely resulted in his financial distress. He was able to discharge debts through the bankruptcy court, but his continued job losses resulted in additional debts. He also failed to file state gross receipt taxes when due. Although years later he agreed to make installment payments, he has not shown sufficient or reliable evidence of regular payments with sufficient progress toward resolution of the debts.

Applicant has not shown sufficient evidence that he has satisfactorily resolved the debts alleged in the SOR, despite their appearance on his credit report. Despite an opportunity to provide additional documentary evidence after the hearing, Applicant failed to provide records showing resolution of the SOR debts. Although he may have made payments toward his tax obligations and some credit accounts, I am unable to verify the amount and regularity of such payments, or other efforts to resolve his financial delinquencies. This coincided with Applicant's unconvincing testimony at the hearing where he was unable to articulate specific actions with regard to his debts to convince me that he has reasonable knowledge and control of his finances.

Applicant has a long history of financial irresponsibility. Despite relatively steady employment since beginning full-time work in 2015, he did not responsibly address his tax liabilities and delinquent debts in a good faith or in a timely manner, until they impaired his security eligibility. He obtained financial advice from debt-relief companies, but besides a Chapter 7 bankruptcy in 2000, no other convincing evidence of debt resolution

was provided. I am not convinced Applicant fully understands his debt status or that he has regained control over his finances. I find no mitigating condition fully applies.

Overall, Applicant's unresolved debts, prolonged delinquent state tax obligations, and current financial condition reflect poorly on his overall financial management decisions and raise significant concerns about his personal financial responsibility. Given his maturity and experience, I am not convinced Applicant is financially responsible, makes good financial decisions, or is currently financially stable. These factors do not demonstrate the high degree of judgment and reliability expected and required for access to classified information.

Guideline K: Handling Protected Information

AG ¶ 33 expresses the handling protected information security concern:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Relevant conditions that could raise a security concern under AG ¶ 34 and may be disqualifying include:

- (a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences;
- (b) collecting or storing protected information in any unauthorized location;
- (c) loading, drafting, editing, storing, transmitting, or otherwise handling protected information, including images, on any unauthorized equipment or medium;
- (f) viewing or downloading information from a secure system when the information is beyond the individual's need-to-know;
- (g) any failure to comply with rules for the protection of classified or sensitive information; and
- (h) negligence or lax security practices that persist despite counseling by management.

Insufficient evidence was submitted to support allegations that Applicant committed security violations or embezzlement against a former employer in 2014.

Applicant fully discussed the circumstances of his employment, and although he may have had some performance related issues while employed, he rebutted allegations of wrongdoing, rules violations, or lax security practices to my satisfaction. On the contrary, Applicant and a witness raised questions of the employer's own security integrity to support his contention that he may have been dismissed in retaliation for raising such issues. I am unable to resolve the employment issues raised at the hearing, but there is insufficient evidence to support SOR ¶ 2.a, and therefore disqualifying security concerns under AG ¶¶ 34 are not implicated by the evidence.

Guideline E; Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct

includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; . . .

The allegations alleged under SOR ¶ 1.z (Guideline F) are cross-alleged under Guidelines K and E. The allegations are specifically covered under those guidelines, and were adequately discussed above. Under these circumstances, AG ¶ 16 is not implicated or is otherwise explicitly covered and adequately addressed under other guidelines.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F, K, and E, in my whole-person analysis.

Applicant has not shown that he is now financially stable and able to adequately address his past financial and tax delinquencies in a timely manner. Despite his full-time employment in his current position since 2015, he has not shown adequate evidence of due diligence, sufficient progress, or financial responsibility in addressing his debts and resolving his state tax issues. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.x:	Against Applicant
Subparagraphs 1.y and 1.z:	For Applicant
Paragraph 2, Guideline K:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge